

**REMARKS/ARGUMENTS**

In response to the Restriction Requirement mailed on December 1, 2004,  
Applicants submit herewith:

- a) a Preliminary Amendment; and
- b) a Response to the Restriction Requirement.

Please consider the following remarks.

***a.) Preliminary Amendment***

***a1.) Status of the Claims***

After entry of this amendment, claims 1-50 are pending in the application.  
Claims 26-49 are amended. Claim 50 is new.

***a2.) Comments on Amendments to the Claims***

The originally filed application contained two claim 26s. Therefore, the original claim numbers for the second claim 26 and claims 27-48 are incorrect and should be renumbered as claims 27-49. Applicants have amended the second claim 26 and claims 27-48 to update the claim numbers and claim dependencies. No new matter has been introduced by these amendments. Since these amendments are correcting minor typographical errors, Applicants are not required to locate support in the specification for these amendments.

Claim 31 is amended in order to replace the misspelled word “derivitized” with the correctly spelled word “derivatized”. Since this is also correcting a minor typographical error, Applicants are not required to locate support in the specification for this amendment.

New claim 50 is independent claim 1 rewritten to recite a species that Applicants wish to use as the starting point for a search of the prior art. Please see section b3.) ii.) below. Support for new claim 50 is located in originally filed claims 1, 8, 18 and 28.

**b.) Response to the Restriction Requirement**

The Examiner has restricted the pending claims into seven groups. In light of the amendments to the claim numbering described above, the claims which correspond to the seven groups are presented below, in both the original and updated form.

| <b><u>Group #</u></b> | <b><u>Original Claim Numbers</u></b> | <b><u>Updated Claim Numbers</u></b> |
|-----------------------|--------------------------------------|-------------------------------------|
| I.                    | 1-29                                 | 1-30                                |
| II.                   | 30-34                                | 31-35                               |
| III.                  | 35-43                                | 36-44                               |
| IV.                   | 35 and 44                            | 36 and 45                           |
| V.                    | 1 and 45                             | 1 and 46                            |
| VI.                   | 35 and 46                            | 36 and 47                           |
| VII.                  | 47 and 48                            | 48 and 49                           |

**b1.) Election of Restricted Group**

Applicants elect the claims of Group I (updated claim numbers 1-30) with traverse. Each of the pending claims emerges from a common idea or concept. Accordingly, Applicants respectfully request that the claims be properly rejoined and examined as a whole.

**b2.) Election of Restricted Species**

Applicants have reviewed the Examiner's Election of Species instructions in paragraph 5 of the Restriction Requirement. These instructions require Applicants to elect a species for the following sets: non-polar lipids, polar lipid emulsifiers, sterols, osmolality adjusting agents, antioxidants, and radiopharmaceuticals. In order to satisfy the Examiner's Election of Species, Applicants elect the following species for the following sets:

|                         |                                    |
|-------------------------|------------------------------------|
| Non-polar lipids        | <b>Triolein</b>                    |
| Polar lipid emulsifiers | <b>Dioleoylphosphatidylcholine</b> |
| Sterol                  | <b>Cholesterol</b>                 |

|                            |                                       |
|----------------------------|---------------------------------------|
| Osmolality Adjusting Agent | <b>Anhydrous Glycerol</b>             |
| Antioxidant                | <b><math>\alpha</math>-tocopherol</b> |
| Radiopharmaceutical        | <b>Ethyl iopanoate</b>                |

***b3.) Traversal of Election of Species and Alternative Election Scheme (AES)***

***b3.) i.) Traversal of Election of Species***

Applicants respectfully traverse the Election of Species. In paragraph 5, the Examiner states that claims 1-48 are generic to a plurality of species comprising emulsions comprising non-polar lipids, polar lipid emulsifiers, sterols, osmolality adjusting agents, antioxidants, and radiopharmaceuticals. Though claims 1-48 are generic, all six of the Examiner's cited elements are not required for all of the claims of Applicants' elected Group I. In fact, the independent claim of Group I, claim 1, comprises two components: 1) a lipophilic core; and 2) a monolayer of amphiphilic or polar lipids. The lipophilic core can comprise a non-polar lipid, while the monolayer can comprise a polar lipid emulsifier, a derivatized polyethylene glycol or polyethylene glycol-linked lipid, and a sterol. Three of the elements which the Examiner required Applicants to select, osmolality adjusting agents, antioxidants, and radiopharmaceuticals, are not required by claim 1. In an effort to simplify the Election requirement and expedite prosecution, Applicants respectfully propose the following Alternative Election Scheme.

***b3.) ii.) Alternative Election Scheme (AES)***

In this AES, Applicants elect an emulsion in which the lipophilic core comprises at least one lipophilic agent (triolein). In addition, the monolayer comprises an emulsifier (dioleoylphosphatidylcholine), a PEG-linked lipid (MPEG-2000-1,2-dioleoyl phosphatidylethanolamine) and a sterol (cholesterol).

This AES is exemplified by new claim 50. Applicants respectfully request that the Examiner uses the species of claim 50 as a starting point for a search of the prior art.

Appl. No. 10/692,311  
Amdt. dated June 1, 2005  
Response to Restriction Requirement dated December 1, 2004

PATENT

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-442-1000.

Respectfully submitted,



Todd Esker  
Reg. No. 46,690

MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, California 94105  
Tel: 415-442-1000  
Fax: 415-442-1001  
1-SF/7237530.1